Investigation Report

Social Welfare Department refused to provide annual accounting inspections records of an elderly home

On 24 December 2018, Mr C lodged a complaint with this Office against the Social Welfare Department ("SWD").

The Complaint

2. Allegedly, the complainant ("Mr C"), as a public figure and a member of the community, had always been concerned about the financial management situation of an elderly home ("Home A") which received funding from SWD under the Lump Sum Grant Subvention System ("LSGSS"). Suspecting that the management of Home A had gained interests by improper means, Mr C made a request to SWD under the Code on Access to Information ("the Code") for certain information about Home A on 17 December 2018. The information requested covered "all the information issued by SWD in relation to the annual accounting inspections ("AIs") it had conducted on Home A, such as AI reports", including the AI reports of the following periods:

(1) From 10 April 1990 to 31 March 2000 ("Information I");
(2) From 1 April 2000 to 31 March 2016 ("Information II"); and
(3) From 1 April 2016 to 31 March 2018 ("Information III").

3. On 20 December 2018, SWD replied to Mr C in writing, indicating that Information I had already been destroyed and was, therefore, not available. As for Information II and Information III, SWD cited the reason under paragraph 2.9(c) of the Code (information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department) and refused to provide those pieces of information.

4. Mr C considered that SWD's financial oversight on subvented organisations with respect to the Lump Sum Grant ("LSG") should be accountable to the public. Disclosure of Information II and Information III would not harm or prejudice the proper and efficient conduct of the operations of SWD. He complained against SWD for unreasonable refusal to release Information II and Information III.

Our Findings

5. After examining the information and explanations provided by SWD, we completed our investigation on 14 March 2019. Our findings follow.

The Code and Relevant Parts of its Guidelines on Interpretation and Application

6. The Code stipulates that Government departments should provide the information they hold to the public as far as possible so that the public can be well informed about the Government and the services it provides, unless there are specific reasons under Part 2 of the Code for not doing so. The reasons for non-disclosure include paragraph 2.9(c) of the Code: "information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department".

7. Paragraph 2.1.1 of the Guidelines on Interpretation and Application of the Code states clearly that withholding of information under most provisions of Part 2 of the Code (including paragraph 2.9(c)) is subject to a "harm or prejudice test", i.e. the department concerned has to consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure.

Response from SWD

<u>Accounting Inspection of the Lump Sum Grant</u>

8. SWD pointed out that according to the Lump Sum Grant

Manual ("the Manual"), SWD conducts AIs on subvented organisations (including Home A) to check whether they have complied with the accounting and financial reporting requirements laid down in the Manual, as well as to carry out review/give advice on their internal control procedures. In respect of financial reporting, subvented organisations have to submit to SWD the Annual Financial Report ("AFR") together with a review report thereon issued by external auditors, and the audited financial statements of the organisation as a whole. In addition, they have to submit detailed internal information, including but not limited to ledger books and accounting records, procurement records, paylists in respect of all personal emoluments expenditure of all subvented staff, staff records (including appointment letters), bank accounts records and related minutes of directors' meetings. Where necessary, the organisations have to provide written replies to related questions raised by SWD.

Public Accountability

9. For the sake of public interest and to make subvented organisations accountable to the public for proper and prudent use of public funds, the Manual stipulates that all subvented organisations must disclose to the public their AFRs as submitted to SWD, giving details on how the LSG has been used. They can publish their latest AFR either in their annual report, or through special circulars, newsletters or whatever means. To facilitate public viewing and inspection of the AFRs, since 2017, SWD has uploaded to its website the latest AFRs submitted by organisations, or set up hyperlinks to the websites of the organisations[Note]. Home A has also uploaded its AFRs of the last three years to its website for public viewing.

Mr C's Request for Information II and Information III

10. SWD explained that Mr C asked SWD to release all the information it had issued in relation to the annual AIs it had

[NoteNote] The relevant link on SWD website:
https://www.swd.gov.hk/en/index/site_ngo/page_AFRandRR/

conducted on Home A. The scope was very wide, as such information covered not only the AI reports, but also internal information of Home A and SWD's inspection methods. SWD considered that the inspection methods, if disclosed, would result in prejudice to the effectiveness of the AIs it conducts on Home A or other organisations in the future.

11. In addition, for SWD to conduct AIs smoothly, detailed internal information and cooperation from organisations are needed. The Manual does not mention that AI reports and inspection-related information would be made public. Disclosure of such information of individual organisations by SWD would damage the mutual trust between the Department and the organisations. SWD anticipated that inspections would be rendered more difficult, and would take more time and be less efficient in the future because organisations, in the expectation that inspection-related information may be released to the public, would spend extra time and be more wary in considering and handling SWD's requests for information.

12. Since Mr C could already understand how Home A had been using the LSG by inspecting its published AFRs (**paragraph 9** above), and the AI reports only involved information on the internal accounting operations of Home A, SWD considered that disclosure of the AI reports of Home A might not bring any extra public benefit; on the contrary, it would result in harm or prejudice to the operations of SWD's AIs on subvented organisations. As such, SWD cited paragraph 2.9(c) of the Code as the reason for refusing Mr C's request for Information II and Information III.

Our Comments

13. SWD has already explained why the disclosure of Information II and Information III would cause harm or prejudice to the proper and efficient conduct of its operations (**paragraphs 10-11** above). This Office considers its explanation not unreasonable.

14. Regarding the "harm or prejudice test" (**paragraph 7**

above), we do not consider that the public interest in disclosing Information II and Information III would outweigh any harm or prejudice that could result from disclosure. Our reasons are:

(1) There is already a mechanism in place under LSGSS which requires subvented organisations (including Home A) to publish their AFRs as submitted to SWD to inform the public on how the LSG has been used (**paragraph 9** above). We have examined SWD's website (**see Note**) and found there a hyperlink to the website of Home A, on which the AFRs and audited financial statements for the three financial years from 2015/16 to 2017/18 (involving the period covered under Information III and part of that under Information II, **paragraphs 2(2) and (3)** above) have been published.

(2) While the AFRs for the years 2000/01 to 2014/15 (involving the remaining period covered under Information II) are not available on Home A's website, we do not see that the public interest involved in disclosing those dated AFRs would outweigh any harm or prejudice that could result from disclosure.

15. In the light of the analysis in **paragraphs 13-14** above, The Ombudsman considers it not improper for SWD to cite paragraph 2.9(c) of the Code in refusing to provide Mr C with Information II and Information III. This complaint is, therefore, unsubstantiated.

Office of The Ombudsman
March 2019